

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Hannah Coleman	Team: Team # 2	CCRB Case #: 200509697	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/17/2005 3:30 PM, Thursday, 08/18/2005	Location of Incident: Randall Avenue and Commonwealth Avenue	Precinct: 43	18 Mo. SOL 2/17/2007	EO SOL 2/17/2007	
Date/Time CV Reported Mon, 08/22/2005 9:42 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/22/2005 9:42 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Damian Rivera	14398	922858	PSA 8
2. POM Kevin Finegan	03546	923434	PSA 8

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT John Rodriguez	03910	912693	PSA 8

Officer(s)	Allegation	Investigator Recommendation
A.POM Kevin Finegan	Abuse: PO Kevin Finegan stopped and questioned § 87(2)(b)	
B.POM Damian Rivera	Abuse: PO Damian Rivera stopped and questioned § 87(2)(b)	
C.POM Kevin Finegan	Abuse: PO Kevin Finegan searched § 87(2)(b)	
D.POM Damian Rivera	Discourtesy: PO Damian Rivera spoke obscenely to § 87(2)(b)	
E.POM Damian Rivera	Abuse: PO Damian Rivera seized § 87(2)(b) s property.	
F.POM Damian Rivera	Abuse: PO Damian Rivera damaged § 87(2)(b) s property.	
G.POM Damian Rivera	Abuse: PO Damian Rivera refused to provide his name and shield number to § 87(2)(b)	

Synopsis

§ 87(2)(b) § 87(2)(b) called the CCRB to file a complaint on August 22, 2005. § 87(2)(b) took the phone and alleged that at 3:30 PM on August 17, 2005, two officers (later identified as Officer Damian Rivera and Officer Kevin Finegan) stopped and questioned him (**Allegation A & Allegation B**) as he stood on the corner of Commonwealth Avenue and Randall Avenue in the Bronx. § 87(2)(b) alleged that Officer Finegan searched him (**Allegation C**), and the officers arrested him. In the car on the way to the precinct, Officer Rivera cursed at § 87(2)(b) (**Allegation D**). Once back at the precinct, Officer Rivera ripped § 87(2)(b)'s PBA card out of his wallet (**Allegation E**) and did not return it (**Allegation F**.) Officer Rivera also refused to provide his name and shield number (**Allegation G**).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) provided a phone statement on August 23, 2005, and was interviewed at the CCRB on August 24, 2005. He provided a second phone statement on August 25, 2005. § 87(2)(g)

§ 87(2)(b) [Enclosures 4, 5-5I, 6]

§ 87(2)(b) is a § 87(2)(b)-old Hispanic male § 87(2)(b). On August 17, 2005, § 87(2)(b) was doing some work for a neighbor. § 87(2)(b) was wearing a tool belt around his waist upon which were attached a number of tools, including a knife approximately five inches in length, which he used to cut rope. The knife was inside a thick black leather sheath and was fastened to the side of the tool belt on § 87(2)(b)'s right side. § 87(2)(b) also carried another knife in a similar sheath. § 87(2)(b) stated that the second knife was not attached to the belt, but was instead stuck through the tool belt in the front. At approximately 3:30 PM, § 87(2)(b) decided to go to a store on the southwest corner of Randall Avenue and Commonwealth Avenue to buy a drink.

After buying his drink, § 87(2)(b) emerged from the store and began to talk to two men that he recognized, patients at the methadone clinic that § 87(2)(b) attends. While § 87(2)(b) talked to the two men, he noticed a small clear plastic "glassine" bag on the ground. § 87(2)(b) picked the bag up and placed it into his right front pocket because he did not know what was in it and was curious. As he did so, he observed a black Chevy Impala driving westbound on Randall Avenue towards the corner. There were two male officers in plainclothes in the car: a white driver (later identified as Officer Kevin Finegan) and a Hispanic passenger (later identified as Officer Damian Rivera). § 87(2)(b) recognized the men as police officers that worked in the neighborhood. The officers stopped the car and Officer Finegan exited the car first and approached § 87(2)(b). Officer Finegan walked up to § 87(2)(b) facing him, and placed his left hand into § 87(2)(b)'s right pocket. Officer Finegan did not say anything to § 87(2)(b). § 87(2)(b) attempted to remove Officer Finegan's hand from his pocket, and Officer Finegan pulled out the plastic bag and some change. § 87(2)(b) told Officer Finegan, "Yo, I just found that." He told the officers that he had not done anything wrong and asked them why he was being detained. Neither officer directly responded. The officers asked § 87(2)(b) about the knives that he was carrying. § 87(2)(b) explained to Officer Finegan that the knives were tools used for work. Officer Finegan asked § 87(2)(b) what he was doing and where he lived. At that time, the officers appeared relaxed and § 87(2)(b) thought that Officer Finegan was going to release him. § 87(2)(b) began to tell the officers about the members of his family that are "on the job." When he said that, the situation "turned." Officer Rivera's demeanor

changed, and he pulled out his handcuffs and handcuffed § 87(2)(b). Neither officer explained to § 87(2)(b) the reason for his arrest.

In the car on the way to the precinct, the handcuffs began to tighten. § 87(2)(b) asked the officers to release the handcuffs. Officer Rivera responded, "Shut the fuck up. You're giving me a headache." § 87(2)(b) protested that the handcuffs were getting tight, and Officer Rivera stated, "Oh, and your courtesy? It's out the window." § 87(2)(b) responded that the courtesy had been lost when he was put in handcuffs. § 87(2)(b) described his demeanor in the car as calm, and stated that Officer Finegan did not say anything rude or disrespectful.

§ 87(2)(b) continued to ask that his handcuffs be loosened. Once they reached the precinct, Officer Rivera answered him, "In a minute. In a minute," but never loosened the handcuffs. § 87(2)(b) continued to ask, and Officer Rivera continued to respond, "In a minute." When he was standing in front of the Sergeant, § 87(2)(b) again asked that his handcuffs be released. Officer Rivera then "put [him] in the corner." § 87(2)(b) continued to ask, and Officer Rivera made a move as if to rush at § 87(2)(b) but did not do so. § 87(2)(b) told Officer Rivera that he should have done it. The verbal argument between § 87(2)(b) and Officer Rivera continued, with § 87(2)(b) telling Officer Rivera that he should either be released or thrown in a cell so his handcuffs could be taken off. By this time, there were a number of other officers surrounding § 87(2)(b). He was taken to the holding cell. Officer Rivera requested that § 87(2)(b) remove his belt, and cut the elastic from the bottom of § 87(2)(b)'s shorts. While Officer Rivera was in the cell cutting the elastic from § 87(2)(b)'s shorts, § 87(2)(b) requested his name. Officer Rivera responded, "Yeah right." Officer Rivera then left the cell and returned soon after with § 87(2)(b)'s wallet. Officer Rivera ripped out a PBA card that had been given to § 87(2)(b) by § 87(2)(b), causing the inside lining of the wallet to rip. Officer Rivera asked § 87(2)(b) why he had the PBA card, and as § 87(2)(b) reached out to take the wallet, Officer Rivera threw it across the cell. A Sergeant was present at the time, and § 87(2)(b) addressed him directly, saying, "You saw that, right? But you're not gonna say nothin.' I understand." Officer Rivera did not return the PBA card.

At approximately 9:00 PM, there was a shift change inside the precinct and a new Sergeant came on duty. After the shift change, § 87(2)(b) did not see Officer Rivera again. § 87(2)(b) was transported to Central Booking at approximately 11:00 PM by Officer Finegan and a female Hispanic officer.

Results of Investigation

Efforts to Locate Witnesses

During his CCRB interview, § 87(2)(b) stated that he did not have the contact information with him for the two Hispanic males that he was talking to at the time of the incident, but he stated that he could obtain it. On August 25, 2005, the day after his CCRB interview, § 87(2)(b) was contacted at his home, at which point he stated that he would obtain the contact information. Eleven phone calls were made to § 87(2)(b) after August 25, 2005 at his home number as well as his daughter's home number, and three please call letters were sent to his home address. Messages were left with his mother as well as with § 87(2)(b) asking that he contact the CCRB. § 87(2)(b) failed to do so, and the witnesses were therefore not identified or contacted.

Officer Statements

Officer Kevin Finegan [Enclosure 7-7E]

Officer Damian Rivera [Enclosure 8-8E]

§ 87(2)(g) Their statements have been combined and inconsistencies have been noted.

Officer Damian Rivera was interviewed on October 26, 2005 at the CCRB. Officer Kevin Finegan was interviewed on November 4, 2005, at the CCRB. On August 17, 2005 Officers Rivera and Finegan worked

an anti-crime tour from 10:00 AM – 6:35 PM. Both officers were in plainclothes and were assigned to unmarked RMP #§ 87(2) a black Chevy Impala.

At approximately 3:30 PM, Officers Rivera and Finegan were on patrol in the vicinity of the Soundview Houses, a predominantly residential neighborhood. Officer Finegan drove and Officer Rivera sat in the passenger's seat. The officers drove down Randall Avenue and turned south onto Commonwealth Avenue. As they made the turn, the officers observed § 87(2)(b) walking on the southwest corner with two Hispanic males. The officers' attention was drawn to the foot-long dagger that § 87(2)(b) held in his hands, which he was using to whittle wood (*Officer Finegan stated that § 87(2)(b) was holding a piece of pipe and was using the knife to "fiddle with" the piece of pipe*). The officers pulled over, and both exited the car and approached § 87(2)(b) at approximately the same time. The officers declared that they were police. Officer Rivera approached § 87(2)(b) and took the knife out of his hands (*Officer Finegan stated that he believed that he had taken the knife*). § 87(2)(b) did not resist. Officer Finegan asked, in a conversational tone, "Sir, what are you doing with this knife?" § 87(2)(b) replied that he used the knife for work. When the officers observed § 87(2)(b) from a closer distance, they both observed that § 87(2)(b) was carrying two other knives on his belt: another dagger in a sheath attached horizontally to § 87(2)(b)'s belt, and a gravity knife attached to a key chain dangling from § 87(2)(b)'s belt. The officers took both knives from § 87(2)(b)'s belt and put them into the RMP. Officer Rivera and Officer Finegan talked with § 87(2)(b) and told him that he should not have been carrying around the knives. § 87(2)(b) was calm and cooperative. The officers explained that they stopped § 87(2)(b) because of the knives, and § 87(2)(b) mentioned that he had a lot of friends "on the job." In their interviews, both officers independently mentioned that they each felt that § 87(2)(b) was trying to convince them to call one of the people he knew on the job, and not to arrest him. The officers explained to § 87(2)(b) that they were going to take him into the Precinct and that the situation would not be resolved there on the corner. § 87(2)(b) began to become more agitated when he realized that he was going to be arrested. Officer Rivera put § 87(2)(b) in handcuffs (*Officer Finegan stated that he handcuffed § 87(2)(b)*) and informed § 87(2)(b) that he was under arrest.

Before putting § 87(2)(b) into the car, Officer Finegan searched § 87(2)(b) (*Officer Rivera did not remember if § 87(2)(b) was searched on the scene or who he was searched by, but Officer Finegan clearly recalled that he searched § 87(2)(b) before he was taken to PSA 8*). In the small right front "coin pocket" of § 87(2)(b)'s pants, Officer Finegan found a small amount of heroin wrapped in a bag or a piece of wax paper.

Once § 87(2)(b) was in the car, he began to act much more "difficult." § 87(2)(b) stated that "if he wasn't in handcuffs, he would kick [the officers'] ass" and told Officer Rivera that he was a "traitor to [his] race." The officers did not respond; they ignored § 87(2)(b) during the 5-10 minute ride to the precinct. Officer Rivera did not use profanity towards § 87(2)(b) during the car ride, and did not state, "Shut the fuck up, you're giving me a headache."

Upon their arrival at the precinct, § 87(2)(b)'s verbal outbursts continued. § 87(2)(b) cursed at other officers in the precinct and challenged Officer Rivera to fight him. § 87(2)(b) continued to call Officer Rivera a "traitor," and stated that he wanted the officers to call his friends in the police department. (*Officer Finegan did not recall the specific things that § 87(2)(b) stated to PO Rivera, both in the car and at the precinct. Officer Finegan did recall that § 87(2)(b) challenged Officer Rivera to fight.*) Officer Rivera explained to § 87(2)(b) that "it was nothing personal," and that he had been arrested because of the knives. § 87(2)(b) became more upset, and the officers explained to him that there was nothing they could do; they were not going to throw away the knives, and they were not going to call one of § 87(2)(b)'s friends.

According to Officer Rivera, he took § 87(2)(b) into the holding cell, and § 87(2)(b) continued to verbally abuse Officer Rivera. At the time that § 87(2)(b) entered the holding cell, there were no other prisoners inside. Officer Rivera began to search § 87(2)(b) and § 87(2)(b) continued to yell at Officer Rivera. Officer Rivera described § 87(2)(b)'s demeanor as "pissed off." The Desk Sergeant, Sgt. Rodriguez, came into the holding pen on a routine check and observed how angry § 87(2)(b) was with Officer Rivera. Sgt. Rodriguez explained to § 87(2)(b) that he could not keep certain property like his

license or his belt with him in the cell. Seeing how angry § 87(2)(b) was with Officer Rivera, Sgt. Rodriguez told Officer Rivera that he would finish searching § 87(2)(b). Officer Rivera stepped out of the cell so that Sgt. Rodriguez could finish the search, but remained in the holding cell until the search was completed. Officer Rivera did not recall whether it was he or Sgt. Rodriguez who cut the elastic from § 87(2)(b)'s shorts and took his shoelaces. Officer Rivera did not recall whether § 87(2)(b) asked for his name and shield number. § 87(2)(b) began "getting into it" with the Sergeant, but calmed down when the Sergeant told him that everyone had to remove their belts because it was a safety hazard. § 87(2)(b) calmed down, but whenever he saw Officer Rivera, he "just lost it again." Officer Rivera left the cell room and did not re-enter in an attempt to keep from provoking § 87(2)(b). Officer Rivera did not recall seeing a PBA card and did not recall entering the holding cell and showing a PBA card to § 87(2)(b). Officer Rivera did not recall ripping a card from § 87(2)(b)'s wallet and keeping it.

According to Officer Finegan, Officer Rivera put § 87(2)(b) into the holding cell, and Officer Finegan "probably" helped to remove § 87(2)(b)'s laces, but did not clearly recollect. Officer Finegan did not recall § 87(2)(b) asking for Officer Rivera's name and shield number. Officer Finegan did not recall having possession of § 87(2)(b)'s wallet, nor did he remember § 87(2)(b) discussing or displaying a PBA card at any time. Officer Finegan did not recall Officer Rivera ripping anything from § 87(2)(b)'s wallet or throwing the wallet across the holding cell. Officer Finegan tried to calm § 87(2)(b) by telling him, "You screaming and acting like this isn't going to make your situation any better." Officer Finegan stayed in the cell area while Officer Rivera finished the search of § 87(2)(b). After the search, Officer Finegan left the cell area.

Sergeant John Rodriguez [Enclosure 9-9A]

Sergeant John Rodriguez was interviewed on November 7, 2005 at the CCRB. On August 17, 2005, Sergeant Rodriguez worked from 2:50 PM-11:47 PM as the Desk Sergeant at PSA 8. § 87(2)(g) Sergeant Rodriguez stated that there are a high number of arrests coming into the precinct in general, and that the precinct is very busy around the time of a tour change. He was shown the Command Log, and recalled that Officer Rivera brought in a male who was "very upset" and "loud," and trying to "egg on" the officers. Officer Rivera and § 87(2)(b) were "going back and forth with words," but Sergeant Rodriguez did not recall exactly what was said. Officer Rivera told § 87(2)(b) something to the effect of, "If you have anything to say, you can say it to the judge right now, but you're under arrest and there's no turning back with that." § 87(2)(b) yelled that he did not deserve to be there, and yelled for the officers to take his handcuffs off. Sergeant Rodriguez did not recall having any personal contact with § 87(2)(b). § 87(2)(b) did not recall being challenged to fight, and did not recall any of the other officers being challenged to fight.

Police Documents

Command Log [Enclosure 10-10A]

The PSA 8 command log for August 17, 2005 indicates that Sgt. Rodriguez signed onto the desk at 3:10 PM. An entry was made in the command log documenting the arrest of § 87(2)(b). The entry was made at 4:05 PM.

Complaint Report (UF-61) [Enclosure 11-11A]

§ 87(2)(a) 160.50

Officer Rivera is listed as § 87(2)(b)'s arresting officer. It is noted that the knives and the heroin were vouchered.

Omniform Arrest Report [Enclosure 12-12B]

§ 87(2)(a) 160.50

Property Vouchers [Enclosure 13-13A]

A total of two property vouchers were prepared in connection with this incident. The first property voucher is for two daggers, one gravity knife, and one sheath. The second voucher is for one glassine envelope of heroin.

Police Officer CCRB History [Enclosure 1-1B]

This is the first CCRB complaint lodged against Officer Kevin Finegan, who has been an officer in the NYPD for six years. Officer Damian Rivera has had five CCRB complaints filed against him during his seven years in the NYPD, with no substantiated allegations.

Complainant CCRB History[Enclosure 2-2A]

This is § 87(2)(b)'s first CCRB complaint. This is the second complaint filed by § 87(2)(b)
§ 87(2)(b)

Complainant Conviction History

As of July 25, 2005, the NYPD discontinued the CCRB's direct access to the BADS database. Although the NYPD is fulfilling the CCRB's request for BADS records, it has refused to provide the CCRB with the arrest histories of CCRB witnesses.

Conclusions and Recommendations

Police Officer Identification

Officer Rivera is listed as § 87(2)(b)'s arresting officer on his arrest report. During his interview, Officer Rivera stated that he was working with Officer Finegan. During his own interview, Officer Finegan confirmed his involvement in the incident.

Undisputed Facts

The following facts are not in dispute: Officer Rivera and Officer Finegan drove up to § 87(2)(b) as he stood on the corner of Commonwealth Avenue and Randall Avenue with two other individuals. The officers exited their vehicle and approached § 87(2)(b). The officers confiscated three knives from § 87(2)(b). The conversation began with all three men speaking calmly, but the situation began to escalate and become more tense after § 87(2)(b) began to discuss the fact that some of his family and/or friends were police officers.

At some point during the encounter, § 87(2)(b) was searched and a small bag containing some amount of drugs was found in his right front pocket. § 87(2)(b) was handcuffed and transported to PSA 8. Once at the precinct, § 87(2)(b) was put into the holding cell, where Officer Rivera took the laces from his shoes and removed his belt. § 87(2)(b) remained in the holding cell for a number of hours, until he was transported to Central Booking. § 87(2)(b) was charged with § 87(2)(a) 160.50
§ 87(2)(b)

Credibility Assessment

§ 87(2)(g)
§ 87(2)(b) claimed that he was not carrying a knife but had picked up a small plastic bag because he was curious about what was inside and did not know what was inside. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

§ 87(2)(g)
[REDACTED]

Recommended Dispositions

Allegation A: Abuse of Authority—Officer Damian Rivera stopped and questioned § 87(2)(b)
Allegation B: Abuse of Authority—Officer Kevin Finegan stopped and questioned § 87(2)(b)
Allegation C: Abuse of Authority—Officer Kevin Finegan searched § 87(2)(b)

It is undisputed that when Officers Rivera and Finegan approached § 87(2)(b) on the corner of Commonwealth Avenue and Randall Avenue, he was in possession of several illegal knives that were attached to his belt and were in plain view. § 87(2)(g)

[REDACTED]

Allegation D: Discourtesy—Officer Damian Rivera spoke obscenely to § 87(2)(b)

§ 87(2)(b) alleged that, while in the car on the way back to the precinct, he asked the officers to loosen his handcuffs, and Officer Rivera responded, “Shut the fuck up. You’re giving me a headache.” Officer Rivera denied using profanity toward § 87(2)(b) and Officer Finegan did not recall Officer Rivera using any profanity. Both officers stated that § 87(2)(b) was yelling at them because he was upset about being arrested, and both stated that they tried to ignore him so as not to encourage him. § 87(2)(g)

[REDACTED]

Allegation E: Abuse of Authority—Officer Damian Rivera seized § 87(2)(b) s property.
Allegation E: Abuse of Authority—Officer Damian Rivera damaged § 87(2)(b) s property.

§ 87(2)(b) alleged that, in the presence of “the Sergeant” (identified by Officer Rivera as Sergeant Rodriguez) after Officer Rivera returned to the holding cell after the search with § 87(2)(b) s wallet in hand. Officer Rivera ripped the PBA card from his wallet, and then threw the wallet across the cell. Officer Rivera did not return the PBA card to § 87(2)(b). At the time of his interview, § 87(2)(b) produced a black wallet with a ripped inner lining. Officer Rivera stated that he did not recall seeing § 87(2)(b) s wallet and did not recall § 87(2)(b) mentioning or displaying a PBA card. The only details that Sergeant Rodriguez recalled about § 87(2)(b) were that he was in the precinct and was arguing with Officer Rivera. Officer Finegan similarly did not recall seeing § 87(2)(b) s wallet, and stated that he did not recall seeing a PBA card at any time. § 87(2)(g)

[REDACTED]

Allegation F: Abuse of Authority—Officer Damian Rivera refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) alleged that he asked Officer Rivera for his name and shield number and Officer Rivera replied, “Yeah right.” Officer Rivera did not recall being asked to provide his name and shield number, and Sgt. Rodriguez did not recall being present in the holding cell area. Officer Finegan also did not recall Officer Rivera being asked to provide his name and shield number while § 87(2)(b) was in the holding cell. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: